

Partners admitted at such Closing) to be equalized and adjusted by booking-up expenses in a manner consistent with Section 4A.2.D.

#### ARTICLE FOUR-A

##### MULTIPLE CLOSINGS

Section 4A.1. Subsequent Closing. In the event of any Closing at which Units are sold for a per Unit price other than \$1,000 (a "Subsequent Closing") after an initial Closing or series of Closings at which Units are sold for a per Unit price of \$1,000 (the "Initial Closing"), the following provisions of this Article Four-A shall apply.

Section 4A.2. Distributions of Cash; Allocations of Profits and Losses.

A. There shall be an interim closing of the books of the Partnership on the day before a Subsequent Closing as provided in Section 12.2C and Profits and Losses shall be determined for the portion of the year ending prior to such Subsequent Closing ending on such day. Such Profits and Losses shall be allocated to those Persons who are Partners on such date in accordance with Section 4.3. To the extent of the aggregate of Distributable Cash from Investments and Distributable Capital Proceeds, there shall be distributed within 45 days after the end of the quarter in which such Subsequent Closing occurs to each of the Partners admitted to the Partnership in the Initial Closing or any prior Subsequent Closing an amount of cash equal to the accrued and undistributed Net Profit, determined as of the day before such Subsequent Closing, in accordance with the provisions of Article Four. Any Net Profit accrued prior to the Subsequent Closing and not previously distributed shall be distributed from Distributable Capital Proceeds and Distributable Cash from Investments to the extent necessary to first equalize the Capital Accounts of all Limited Partners on a per Unit basis.

B. On the day before any Subsequent Closing, consistent with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(f), the Capital Accounts of all Limited Partners and the General Partner and the Carrying Values of all Partnership properties immediately prior to

any Subsequent Closing shall be adjusted (consistent with the provisions hereof) upwards or downwards to reflect any Unrealized Gain or Unrealized Loss attributable to each Partnership property (as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such property and had been allocated to the Limited Partners and the Managing General Partner, at such time, pursuant to Sections 4.3 through 4.8). Such Unrealized Gain or Unrealized Loss shall be determined by the General Partner using such methods of valuation as it in its sole discretion deems appropriate. As used herein, Carrying Value shall initially mean with respect to any property the adjusted basis of such property for federal income tax purposes, and following any Subsequent Closing shall mean the value as adjusted from time to time in accordance with the provisions of this Section 4A.2.B. Unrealized Gain shall mean as of any date of determination, the excess, if any, of the fair market value of property (as determined under this Section 4A.2.B) as of such date of determination over the Carrying Value of such property as of such date of determination (prior to any adjustment to be made pursuant to this Section 4A.2.B as of such date), and Unrealized Loss shall mean as of any date of determination, the excess, if any, of the Carrying Value of property as of such date of determination (prior to any adjustment to be made pursuant to this Section 4A.2.B as of such date) over the fair market value of such property (as determined under this Section 4A.2.B) as of such date of determination. Any Profit or Loss attributable to the subsequent taxable disposition of any property, and any Deemed Distribution Amount with respect to any property, shall be determined by the Partnership as if the adjusted basis of such property as of such date of disposition or deemed disposition was equal in amount to the Partnership's Carrying Value with respect to such property as of such date.

C. Upon the Partnership's taxable disposition of any property with respect to which there has been an adjustment of the Carrying Value, items of taxable gain and loss attributable thereto shall first be allocated among the Partners (in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f)(4) and a manner consistent with the principles of section 704(c) of the Code) to take into account the Unrealized Gain or Unrealized Loss attributable to such property in the same manner as the Capital Accounts of such Partners were previously adjusted to reflect Unrealized Gain or Unrealized Loss. A Part-

ner's Capital Account shall not be adjusted to reflect allocations made pursuant to this Section 4A.2.C.

D. The General Partner shall use its best efforts (i) to effect the revaluations required by Paragraph B hereof so that, immediately after any Subsequent Closing, taking into account distributions required by Paragraph A of this Section 4A.2, the Capital Accounts of all Limited Partners are equal, and (ii) to reconcile the revaluation with the price paid by the most recently admitted Additional Limited Partners for Units. Upon a revaluation under Paragraph B of this Section 4A.2, (i) (x) in the case of a sale of Units registered under the Securities Act of 1933, as amended, pursuant to the Registration Statement, Organization and Offering Expenses (other than Sales Commissions) or (y) in the case of the sale of Units to a Foreign Partner, organizational expenses (as defined in Treasury Regulation Section 1.709-2(a)), (either of such expenses referred to hereinafter as "Booked-up Expenses") shall be treated as assets and revalued on the books of the Partnership to their original cost, (ii) the subscription price per Unit for the then occurring Subsequent Closing shall reflect the treatment of Booked-up Expenses as assets of the Partnership, and (iii) the Capital Accounts of the previously admitted Limited Partners shall be booked up to reflect the revaluation of Booked-up Expenses and, in the case of the sale of Units registered under the Securities Act of 1933, as amended, pursuant to the Registration Statement, the Capital Accounts of all Limited Partners (other than any Foreign Partner) shall be charged with a pro rata share of the Partnership syndication expenses (as defined in Treasury Regulation Section 1.709-2(b)) other than Sales Commissions. Thereafter, the Booked-up Expenses that are Organization and Offering Expenses other than syndication expenses shall be amortized (solely for book purposes) over the remaining amortization period of such expenses and charged against the Profits and Losses of the Partnership in accordance with Sections 4.3-4.8. The General Partner may make such further allocations of Profit and Loss as may be necessary, as determined by the General Partner in its sole discretion, to equalize as quickly as possible after a Subsequent Closing the Capital Accounts of all the Limited Partners.

**Section 4A.3. Return of Capital Contribution.**  
If any Capital Contributions are returned to the Partners pursuant to Section 3.4 or 3.5.C, such amounts shall be

returned to the General Partner and to the Limited Partners as a class, pro rata in proportion to the respective Capital Contributions of each such class, and the amount distributed to the Limited Partners as a class shall be allocated among them pursuant to Section 4.5.A.

## ARTICLE FIVE

### RIGHTS, POWERS AND DUTIES OF THE GENERAL PARTNERS

#### Section 5.1. Management and Control of the Partnership.

A. Subject to the Consent of the Limited Partners where required by this Agreement, the General Partners, within the authority granted to them under and in accordance with the provisions of this Agreement, shall have the full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership and shall make all decisions regarding the business of the Partnership and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the State. The Independent General Partners shall provide overall guidance and supervision with respect to the operations of the Partnership, shall perform all duties imposed on the directors of business development companies by the 1940 Act or by any exemptive order of the Securities and Exchange Commission granted to the Partnership and shall monitor the activities of Persons in which the Partnership has invested. Except as otherwise expressly provided in this Agreement, the General Partners are hereby granted the right, power and authority to do on behalf of the Partnership all things which, in their sole judgment, are necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership.

B. No Limited Partner shall participate in the management of or have any control over the Partnership's business nor shall any Limited Partner have the power to represent, act for, sign for or bind the General Partners or the Partnership. The Limited Partners hereby Consent to the exercise by the General Partners of the powers conferred on them by this Agreement.

**Section 5.2. Authority of the General Partners.**

A. In addition to any other rights and powers that the General Partners may possess under this Agreement and the Act, the General Partners shall, except to the extent otherwise provided herein, have all specific rights and powers required or appropriate to their management of the Partnership business which, by way of illustration but not by way of limitation, shall include the following rights and powers:

(1) to acquire, hold, manage, sell, dispose of and otherwise deal with and invest in any security or securities (of any class or nature) of any Person and any real or personal property of any nature; provided, however, that:

(a) each Mezzanine or Other Investment made by the Partnership shall either be approved by the Independent General Partners, or shall, in the determination of the Independent General Partners, meet the Guidelines for preapproval and each Bridge Investment shall be approved by the Independent General Partners, prior to the purchase by the Partnership of such Mezzanine, Other or Bridge Investment, as the case may be;

(b) the Independent General Partners shall not approve the Partnership's acquisition of an Enhanced Yield Investment in a Non-Managed Company or certify that such Investment meets the Guidelines and the Managing General Partner shall not invest the assets of the Partnership in Temporary Investments that are not Exempt Investments, if more than 30 percent of the value of the total assets of the Partnership, as computed pursuant to Section 55(b) of the 1940 Act, is invested in Enhanced Yield Investments in Non-Managed Companies and Temporary Investments that are not Exempt Investments;

(c) the Independent General Partners shall limit the amount of Available Capital invested in Coinvestments so that at the expiration of the Investment Period at least 15% of Net Capital Contributions represented by Enhanced Yield Investments have been invested in (i) Enhanced Yield Investments issued in a transac-

tion in which greater than 50% of the principal amount of each class of debt security and of the number of shares of each class of equity security constituting a part of the Enhanced Yield Investment purchased by the Partnership have been purchased in such transaction by institutional investors that are not Affiliates of the Fund or of the Managing General Partner or (ii) in Enhanced Yield Investments that are not Coinvestments;

(d) the Partnership shall not invest more than 10 percent of Available Capital in any one Mezzanine Investment, except that the Partnership may, with the approval of the Independent General Partners, make two Mezzanine Investments each utilizing up to 20 percent of Available Capital (the "Diversification Requirement");

(e) the Partnership shall not invest more than 20 percent of Available Capital in any one Bridge Investment, except that the Partnership may make one Bridge Investment utilizing up to 25 percent of Available Capital and shall not make any Bridge Investment that would result in more than 50 percent of Available Capital being invested in Bridge Investments;

(f) the Partnership shall not invest more than 10% of Available Capital in Other Investments; and

(g) the Partnership shall not invest more than 15% of the Partnership's Available Capital in securities constituting senior debt that are not purchased as a permanent component of a Mezzanine or Other Investment.

(2) to incur all expenditures permitted by this Agreement;

(3) to employ and dismiss from employment any and all employees, agents, attorneys, consultants, custodians of the assets of the Partnership, transfer agents or servicing agents, including employment of the General Partners and their Affiliates and to designate employees or agents of the Partnership, who may be employees or agents of a General Partner, as

officers with titles including but not limited to "vice-president", "president", "treasurer", "secretary", "assistant secretary", "assistant treasurer", "managing director" and "chairman" and who in such capacity may act for and on behalf of the Partnership, as and to the extent authorized by the General Partners;

(4) to enter into, execute, amend, supplement, acknowledge, deliver and perform any and all agreements, contracts, documents, certifications and instruments, including, but not limited to, contracts with banks, trust companies or other investment advisers, including General Partners and any of their Affiliates for the performance of such functions, including the investment and reinvestment of all or part of the Partnership's assets, execution of portfolio transactions, and any or all administrative functions and make regulatory filings necessary or convenient in connection with the acquisition, holding, and disposition of and dealing with the investments of the Partnership;

[(5) to borrow money and issue evidences of indebtedness, including multiple classes of senior indebtedness or a single class of limited partnership interests senior to the Units to the extent permitted by the 1940 Act, in furtherance of any or all of the purposes of the Partnership, and to secure the same by mortgage, pledge or other lien on the Partnership's investments or any other assets of the Partnership, and to refinance and/or repay, in whole or in part, any such borrowings, indebtedness or security and repurchase or retire, in whole or in part, any such interests senior to the Units;]

(6) to protect and preserve the title and interest of the Partnership with respect to the assets at any time owned or acquired by the Partnership;

(7) to collect all amounts due to the Partnership, and otherwise to enforce all rights of the Partnership, and in that connection to retain counsel and institute such suits or proceedings, in the name and on behalf of the Partnership, or, if the Independent General Partners shall so determine, in the name of the Partners;

(8) to the extent permitted by the 1940 Act, to designate and appoint one or more agents for the Partnership who shall have such authority as may be conferred upon them by the Independent General Partners, and who may perform any of the duties, and exercise any of the powers and authority, conferred upon the Independent General Partners hereunder, including, but not limited to, designation of one or more agents as authorized signatories on any bank account maintained by the Partnership;

(9) to establish and maintain one or more bank accounts for the Partnership in such bank or banks having assets of at least \$50,000,000 as the Independent General Partners may, from time to time, designate as depositaries of the funds of the Partnership;

(10) to cause securities owned by the Partnership to be registered in the Partnership's name or in the name of a nominee or to be held in street name, as they shall elect and to cause the assets of the Partnership to be held in custody in compliance with the requirements of the 1940 Act;

(11) to the extent that funds of the Partnership are available, to pay all debts and obligations of the Partnership;

(12) to the extent that funds of the Partnership are available, to make all distributions periodically to the Partners in accordance with the provisions of this Agreement;

(13) to enter into, execute, deliver and perform any sales, agency or dealer agreements and escrow agreements with respect to the sale of Units under the Registration Statement and to provide for the distribution of such Units by the Partnership through one or more underwriters (which may be Affiliates of a General Partner) or otherwise, to pay, or cause the Partnership to pay, the fees, commissions, charges and expenses related thereto, and to indemnify and hold harmless that firm (and any selected dealer participating with that firm in a distribution of Additional Limited Partners' Interests pursuant to the terms of such agreement) from

any liability incurred by it in so acting for the Partnership pursuant to the terms of such agreement;

(14) to establish and maintain the books and records of the Partnership in accordance with this Agreement;

(15) to establish valuation principles and to apply periodically such principles to the Partnership's investments;

(16) to perform all normal business functions, and otherwise operate and manage the business and affairs of the Partnership, in accordance with and as limited by this Agreement;

(17) to establish and maintain a Capital Account for each Partner in accordance with this Agreement;

(18) subject to the provisions of Section 5.4, to deal with, or otherwise engage in business with, or provide services to, and receive compensation therefor from, any Person who has in the past dealt or engaged in business with the General Partners or any of their Affiliates or may in the future have such dealings or do such business with General Partners or any of their Affiliates;

(19) to make temporary investments of Partnership capital in Temporary Investments pending final investment disposition or cash distributions to the Partners;

[(20) to enter into interest rate swap agreements and interest rate cap agreements;]

(21) to engage in any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with or convenient or incidental to, the accomplishment of the purposes of the Partnership so long as said activities and contracts may be lawfully carried on or performed by a partnership under the laws of the State, in accordance with and as limited by this Agreement.

The Limited Partners hereby Consent and agree to the exercise by the General Partners of any of the foregoing

rights and powers in addition to any other right or power exercised by the General Partners as required or appropriate to their management of the Partnership and to the issuance by the Partnership of any limited partner interest senior to the Units.

B. The Managing General Partner is hereby granted the exclusive power and authority from time to time to do the following:

(1) subject to the supervision of the Independent General Partners, (a) to supervise the Investment Adviser in managing and controlling the investments of the Partnership and in providing services to the Partnership as provided in the investment advisory agreement among the Investment Adviser, the Partnership and the Other Partnership to be otherwise approved by the Independent General Partners, and (b) in connection therewith to carry out those activities set forth in Section 5.2.A(4);

(2) to offer to provide and, if accepted, provide, management assistance to Managed Companies to the extent required by the 1940 Act or otherwise considered necessary or incidental by the Managing General Partner;

(3) to admit Additional Limited Partners to the Partnership in accordance with Section 3.3.A and to admit an assignee of a Limited Partner's Interest to be a Substituted Limited Partner in the Partnership, pursuant to and subject to the terms of Section 8.3, without the Consent of any Limited Partner;

(4) to perform all duties imposed on a "tax matters partner" of the Partnership by Sections 6221 through 6232 of the Code, including (but not limited to) the following: (a) the power to conduct all audits and other administrative proceedings (including windfall profit tax audits) with respect to Partnership tax items; (b) the power to extend the statute of limitations for all Partners with respect to Partnership tax items; (c) the power to file a petition with an appropriate federal court for review of a final Partnership administrative adjustment; and (d) the power to enter into a settlement with the Internal Revenue Service on behalf of, and binding upon, those Limited Partners having less than 1%

interest in the Profits of the Partnership unless a Limited Partner notifies the Internal Revenue Service and the Managing General Partner that the Managing General Partner may not act on such Limited Partner's behalf; and

(5) to provide such administrative and managerial services to the Partnership as shall be necessary for the operation of the Fund or to enter into an administrative services agreement with the Fund Administrator pursuant to which the Fund Administrator will provide some or all of such services.

The grant of exclusive power and authority to the Managing General Partner under this Section 5.2.B in no way limits the rights, powers or authority of the Independent General Partners under this Agreement, or as otherwise provided by the 1940 Act or by exemptive order issued by the Securities and Exchange Commission thereunder.

C. The General Partners, in the name and on behalf of the Partnership, subject to the approval of the Independent General Partners, are authorized to enter into an advisory agreement with the Investment Adviser pursuant to which the Investment Adviser will provide investment advisory services to the Partnership.

D. The Independent General Partners, subject to such approvals by the Limited Partners as may be required by the 1940 Act, in the name and on behalf of the Partnership, are authorized to appoint the Accountants for the Partnership.

E. Any Person dealing with the Partnership or the General Partners may rely upon a certificate signed by a General Partner, thereunto duly authorized, as to:

(1) the identity of the General Partners or any Limited Partner;

(2) the existence or non-existence of any fact or facts which constitute conditions precedent to acts by the General Partners or in any manner germane to the affairs of the Partnership;

(3) the Persons who are authorized to execute and deliver any instrument or document of the Partnership; or

(4) any act or failure to act by the Partnership or as to any other matter whatsoever involving the Partnership or any Partner.

F. Any document executed by any of the General Partners while acting in the name and on behalf of the Partnership shall be deemed to be the action of the Partnership vis-a-vis any third parties (including the Limited Partners as third parties for such purpose).

G. If there is a determination by the Internal Revenue Service, which in the opinion of counsel is likely to be sustained by a court of competent jurisdiction, or if at any time in the opinion of counsel [it is likely] [there is a substantial risk], that the Partnership will or, at some future date, would be classified as a corporation or a publicly traded partnership for federal income tax purposes, the Managing General Partner may take such steps as it deems necessary or desirable to minimize the adverse tax consequences of such classification including, without limitation, (i) suspend all transfers of Units for one quarterly transfer date, (ii) amend this Partnership Agreement to the extent necessary to ensure that the Partnership will, in the opinion of counsel, be classified as a partnership for federal income tax purposes, (iii) reorganize the Partnership so that it qualifies as a regulated investment company pursuant to section 851 of the Code or (iv) liquidate, in a prompt or in an orderly fashion as determined by the General Partners in their sole discretion, the Partnership.

Section 5.3. Dealings of the General Partners and Their Affiliates with the Partnership. Without limitation upon the other powers set forth herein, the Independent General Partners are expressly authorized, in the name of and on behalf of the Partnership, to:

(1) authorize and approve the purchase of Coinvestments, subject to the terms and conditions of any exemptive order issued by the Securities and Exchange Commission under the 1940 Act with regard to the purchase of Coinvestments;

(2) pay the Managing General Partner a quarterly Fund Administration Fee commencing from the date of the first Closing payable in advance (prorated for the period from the date of the first Closing to the

end of the then current fiscal quarter) (it being understood that all or part of any such fee paid to the Managing General Partner may be paid by the Managing General Partner to the Fund Administrator). The Fund Administration Fee shall be equal to (a) for each of the first four years of operation of the Partnership, an annual amount equal to the greater of (i) 1% of the gross offering proceeds of the Units of the Partnership but not greater than \$500,000 (the "Minimum Fee") and (ii) .45% of the amount of net offering proceeds, (b) for each of the next four years of operation of the Partnership, an annual amount equal to the greater of (i) the Minimum Fee and (ii) (x) an amount equal to .45% of the excess of the amount of net offering proceeds of the Partnership and the Other Partnership over 50% of the amount of capital reductions of the Partnership and the Other Partnership, but in no event exceeding in aggregate the sum of \$3.2 million and all direct out-of-pocket expenses incurred on behalf of the smaller, measured in terms of gross offering proceeds, of the Partnership and the Other Partnership, (y) multiplied by a fraction the numerator of which is the number of Units issued by the Partnership and the denominator of which is the sum of such number of Units and the number of units of limited partner interest issued by the Other Partnership, and (c) thereafter for each year equal to the annual sum of [\$300,000] [\$100,000] and all actual out-of-pocket expenses incurred on behalf of the Partnership (but not for compensation of executive officers of the Managing General Partner or the Fund Administrator) but in no event exceeding in aggregate [\$2.5] [\$1.0] million with respect to any year, as compensation for managing and controlling the affairs of the Partnership; and reimburse the Managing General Partner for its or, if incurred by the Fund Administrator, the Fund Administrator's actual, out-of-pocket extraordinary fees and expenses, including but not limited to extraordinary legal fees and expenses, statutory insurance and bonding expenses, and optional insurance and bonding expenses permitted by the 1940 Act, but no other expenses, incurred on behalf of the Partnership in connection with the management of the Partnership; provided, however, that the Independent General Partners may increase the amount of Fund Administration Fee at any time without the Consent of the Limited Partners in order to compensate the Managing

General Partner appropriately for the market value of the costs and expenses related to its services; and

(3) pay the Investment Adviser an Investment Advisory Fee commencing from the date of the first Closing payable quarterly in advance (prorated for the period from the date of the first Closing to the end of the then current fiscal quarter), for so long as the Investment Adviser is the investment adviser to the Partnership, equal, on an annual basis, to the greater of (a) the product of \$2,000,000 and a fraction, the numerator of which is the number of Units issued by the Partnership and the denominator of which is the sum of such number of Units and the number of units of limited partner interest issued by the Other Partnership, and (b) 1.0% of Available Capital (with respect to the calculation of any quarterly fee, as of the first day of the quarter to which the fee relates) as compensation for the management of the Partnership's Investments; and reimburse the Investment Adviser for those expenses as are specifically set forth in clause (1) of the definition of "Acquisition Expenses" incurred on behalf of the Partnership including, with respect to any legal fees and expenses referred to in such clause, the legal fees and expenses of the law department of Equitable Life, but no other fees or expenses; provided that, as of any time of determination of the amount due the Investment Adviser pursuant to the Investment Advisory Fee, such amount due shall be reduced by an amount equal to (x) the sum of (i) 80% of any commitment, transaction, investment banking and "break-up" or other such similar fees received by the Investment Adviser in cash or securities to the extent allocable in the good faith judgment of the Investment Adviser to Enhanced Yield Investments made, proposed or committed to be made by the Partnership and (ii) any distributions made by the Partnership to the Managing General Partner pursuant to Sections 4.1B(1) and 4.2B(1) from Temporary Investments, minus (y) the amount of such fees and distributions previously credited against the Investment Advisory Fee. After the initial term set forth herein, the amount and terms of Investment Advisory Fee shall thereafter be as approved by the Independent General Partners.

For the purpose of this Section 5.3, "net offering proceeds" means the sum of the amount of the gross proceeds of the sale of Additional Limited Partners' Interests net of Organization and Offering Expenses; "capital reductions" mean the amount of capital distributed to the Partners and realized losses from investment through the end of such preceding quarter.

Section 5.4. Prohibited Transactions. Notwithstanding anything to the contrary contained herein, the following transactions are specifically prohibited to the Partnership except to the extent permitted by this Agreement:

A. The Partnership shall not lend money or other property to a General Partner, the Investment Adviser or any of their Affiliates, except as permitted by the 1940 Act or any exemptive order issued by the Securities and Exchange Commission thereunder.

B. The Partnership shall not sell or purchase any security or other property to or from a General Partner, the Investment Adviser or any of their Affiliates, or effect any transaction in which a General Partner or the Investment Adviser or any of their Affiliates is a joint or a joint and several participant or effect any reciprocal transactions or business arrangements in which a General Partner, the Investment Adviser or any of their Affiliates is a party, except as permitted by the 1940 Act or any exemptive order issued by the Securities and Exchange Commission thereunder.

C. Expenses of the Partnership shall not be billed except directly to the Partnership (but shall be paid pursuant to the terms of this Agreement), and no reimbursements shall be made therefor to the General Partners or any of their Affiliates except as permitted by Sections 5.3 and 5.7.

Section 5.5. Restrictions on the Authority of the General Partners.

A. Without the Consent of all the Limited Partners, but subject to the provisions of Section 11.2, the General Partners shall not have the authority to:

(1) do any act in contravention of this Agreement;

(2) do any act that would make it impossible to carry on the ordinary business of the Partnership;

(3) admit a Person as a General Partner, except as provided in this Agreement;

(4) admit a Person as a Limited Partner, except as provided in this Agreement;

(5) continue the business with Partnership property on the retirement, removal or Incapacity of a General Partner, except as provided in the Agreement; or

(6) knowingly perform any act, unless specifically required by the terms of this Agreement, that would subject any Limited Partner to liability as a general partner in any jurisdiction.

In the event that the written Consent or ratification of all of the Limited Partners is obtained under this Section 5.5A, the General Partners agree promptly to amend this Agreement to the extent necessary to reflect such actions.

B. Except as permitted by the 1940 Act or any exemptive order issued by the Securities and Exchange Commission thereunder, the General Partners and their Affiliates shall not, acting as principal, (1) sell any security or other property to the Partnership or to any Person controlled by the Partnership; (2) purchase any security or other property from the Partnership or from any Person controlled by the Partnership; (3) borrow money or other property from the Partnership or from any Person controlled by the Partnership; and (4) effect any transaction in which the Partnership or a Person controlled by the Partnership is a joint or a joint and several participant with such General Partner or Affiliate thereof. Except as permitted by the 1940 Act or any exemptive order issued by the Securities and Exchange Commission thereunder, the Partnership shall not purchase any Enhanced Yield Investment that has been sponsored by any Affiliate of the Managing General Partner.

C. Except as permitted by the 1940 Act or any exemptive order issued by the Securities and Exchange

Commission thereunder, the General Partners shall not, acting as agent or broker, accept from any source any compensation, other than pursuant to Section 5.7 for the purchase or sale of any property to or for the Partnership or any Person controlled by the Partnership, or for effecting any such transaction.

D. The Independent General Partners shall not cause the Partnership to consent to, or join in, any waiver, amendment, or modification of the terms of any partnership agreement, limited partnership agreement, management agreement or investment contract to which it or any Affiliate thereof is a party unless, in the good faith judgment of the Independent General Partners, such waiver, amendment, or modification would be in the best interest of the Partnership.

E. Except as provided in Section 5.2G, without the Consent of a majority in Interest of the Limited Partners, but subject to the provisions of Section 11.2, the Independent General Partners shall not have the authority to:

(1) sell, abandon or otherwise dispose of at any one time all or substantially all the assets of the Partnership, except for a liquidation sale of a final Enhanced Yield Investment or component thereof or security related thereto remaining as a result of the sale of Enhanced Yield Investments in the ordinary course of business; or

(2) elect to dissolve the Partnership.

**Section 5.6. Duties and Obligations of General Partners.**

A. The General Partners shall take all action that may be necessary or appropriate for the continuation of the Partnership's valid existence as a limited partnership under the laws of the State (and each other jurisdiction in which such existence is necessary to protect the limited liability of the Limited Partners or to enable the Partnership to conduct the business in which it is engaged) and for the acquisition, holding and disposition of the Partnership's investments in accordance with the provisions of the Agreement and applicable laws and regulations.

B. Subject to Section 5.8 hereof, the General Partners shall devote to the Partnership such time as the General Partners shall deem to be necessary to conduct the Partnership business and affairs in an appropriate manner.

C. The General Partners shall be under a duty and obligation to conduct the affairs of the Partnership in the best interests of the Partnership, including the safekeeping and use of all Partnership funds and assets (whether or not in the immediate possession or control of the General Partners) and the use thereof for the benefit of the Partnership. Neither the General Partners nor any of their Affiliates shall enter into any transactions with the Partnership that may significantly benefit the General Partners or such Affiliates unless the transaction is expressly permitted hereunder and under the 1940 Act or an exemptive order issued by the Securities and Exchange Commission thereunder or is entered into principally for the benefit of the Partnership in the ordinary course of Partnership business.

D. The General Partners shall use their best efforts, in the conduct of the Partnership's business, to put all Persons with whom the Partnership does business or in whom the Partnership invests on notice that the Limited Partners are not liable for Partnership obligations and all agreements to which the Partnership is a party shall include a statement to the effect that the Partnership is a limited partnership organized under the Act; but the General Partners shall not be liable to the Limited Partners for any failure to give such notice to such Persons or if any such agreement fails to contain such statement.

E. The General Partners shall at all times conduct their affairs and the affairs of all of their Affiliates and of the Partnership in such a manner that neither the Partnership nor any Partner nor any Affiliate of any Partner will have any personal liability with respect to any Partnership indebtedness, unless in the case of personal liability with respect to the Partnership, the General Partners or any Affiliate of the General Partners, the General Partners are of the opinion that such conduct would be in the best interests of the Limited Partners.

F. The General Partners shall prepare or cause to be prepared and shall file on or before the due date

(or any extension thereof) any Federal, state or local tax returns required to be filed by the Partnership. The General Partners shall cause the Partnership to pay any taxes payable by the Partnership; provided, however, that the General Partners shall not be required to cause the Partnership to pay any tax so long as the General Partners or the Partnership are in good faith and by appropriate legal proceedings contesting the validity, applicability or amount thereof and such contest does not materially endanger any right or interest of the Partnership.

G. The General Partners shall, from time to time, submit to any appropriate state securities administrator all documents, papers, statistics and reports required to be filed with or submitted to such state securities administrator.

H. The General Partners shall use their best efforts to cause the Partnership to be formed, reformed, qualified to do business, or registered under any applicable assumed or fictitious name, statute or similar law in any state in which the Partnership then makes investments or transacts business, if such formation, reformation, qualification or registration is necessary in order to protect the limited liability of the Limited Partners or to permit the Partnership lawfully to own, make investments or transact business.

I. The General Partners shall, from time to time, prepare and file, or cause to be prepared and filed, any amendment to the Certificate or this Agreement and other similar documents that are required by law to be filed and recorded for any reason, in such office or offices as are required under the laws of the State or any other state in which the Partnership is then formed or qualified. The General Partners shall promptly register the Partnership under any assumed or fictitious name, statute or similar law in force and effect in each state in which the Partnership is then formed or qualified. The General Partners shall do all other acts and things (including making publication or periodic filings of the Certificate or this Agreement or other similar documents, or amendments thereto) that may now or hereafter be required, or deemed by the General Partner to be necessary, (1) for the perfection and continued maintenance of the Partnership as a limited partnership under the laws of the State and each other state in which the Partnership is then formed, (2) to protect the limited liability of the

Limited Partners as limited partners under the laws of the State and each other state in which the Partnership is then formed or qualified and (3) to cause the books and records of the Partnership, and if required by law, to cause the Certificate and this Agreement to reflect accurately the agreement of the Partners, the identity of the Limited Partners and the General Partners and the amounts of their respective Capital Contributions.

J. The General Partners shall use their best efforts to assure that in all correspondence, contracts, agreements and other documents relating to the Partnership (1) it shall plainly appear, or be so stated, that the Partnership is a limited partnership organized under the Act, (2) the full name of the Partnership shall at all times be used and (3) wherever appropriate, it shall be expressly stated that, for purposes of determining the liability of the Limited Partners, the Act shall be controlling; but the General Partners shall not be liable to the Limited Partners for any failure to make such statements.

K. The Managing General Partner shall use its best efforts to maintain at all times a net worth not less than \$5,000,000 or at such lower level that is sufficient, in the opinion of counsel to the Partnership, to meet the net worth requirements of any statute, Federal income tax regulations or the courts applicable to a general partner of a limited partnership in order to ensure that the Partnership will not fail to be classified for Federal income tax purposes as a partnership rather than as an association taxable as a corporation. The Managing General Partner shall not declare or pay any dividend to the extent that, as a result of such declaration or payment, the Managing General Partner would fail to maintain such net worth.

#### Section 5.7. Reimbursement and Compensation.

A. The Managing General Partner shall be entitled to receive out of Partnership funds available therefor reimbursement of all Organization and Offering Expenses (excluding any selling commission or actual marketing or sales expenses) expended by it or by the Fund Administrator (in such case for reimbursement by the Fund Administrator) on behalf of the Partnership; provided that to the extent that the aggregate of such expenses, together with similar expenses paid by the Partnership, exceed

the product of \$6,000,000 and a fraction, the numerator of which is the number of Units issued by the Partnership and the denominator of which is the sum of such number of Units and the number of units of limited partner interest issued by the Other Partnership, the reimbursement to the Managing General Partner will be reduced pro rata.

B. As compensation for services rendered to the Partnership, each Independent General Partner initially will be paid (i) the annual sum of \$30,000 for each of the first three years of the operations of the Partnership, and \$15,000 for each year thereafter, payable in quarterly installments; (ii) the sum of \$500 for each meeting of the Independent General Partners attended by such Independent General Partner; (iii) if a committee is appointed by the Independent General Partners, the sum of \$500 for each such committee meeting attended; provided, however, that if such committee meeting is held on the same day as a meeting of Independent General Partners the sum paid for attendance at such committee meeting shall be \$250; and (iv) all out-of-pocket expenses relating to attendance at the meetings, committee or otherwise, of the Independent General Partners. The amount of compensation payable to the Independent General Partners shall be reviewed annually by the Independent General Partners and may be increased or decreased by the Independent General Partners to provide for such compensation as the Independent General Partners may deem reasonable under the circumstances. Payment of compensation to an Independent General Partner hereunder shall not be deemed a distribution for purposes of Section 4.1 nor shall such payment affect such Person's right to receive any distribution for purposes of Section 4.1 nor shall such payment affect such Person's right to receive any distribution to which he would otherwise be entitled as a Limited Partner. Compensation paid to Independent General Partners for consulting services must be approved by the Independent General Partners.

C. The General Partners shall not, either in their capacity as General Partners or in their individual capacity, receive any salary, fees, commissions, profits, distributions, or other compensation except as provided or permitted under Article Four or Article Five.

**Section 5.8. Other Businesses of Partners.**  
Subject to Section 5.5A any Partner and any Affiliate of any Partner may engage in or possess an interest in other

business ventures of any kind, nature or description, independently or with others, whether or not such ventures are competitive with the Partnership. Neither the Partnership nor any Partner shall have any rights or obligations by virtue of this Agreement or the limited partnership relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the business of the Partnership, shall not be deemed wrongful or improper. Nothing in this Agreement shall be deemed to prohibit the General Partners or any Affiliate of the General Partners from dealing, or otherwise engaging in business, with Persons transacting business with the Partnership. The General Partners will act within the procedures and guidelines established by the Independent General Partners and as set forth in any exemptive order issued by the Securities and Exchange Commission under the 1940 Act or otherwise designed to minimize any conflict between the Partnership's business and other business interests of the General Partners and their Affiliates. The Managing General Partner hereby consents and agrees promptly to furnish the Independent General Partners, upon request, with information on a confidential basis as to any investments made by it or any of its Affiliates, for their own account or for others based upon their recommendation.

Section 5.9. Exculpation and Indemnification of the General Partners.

A. Neither any of the General Partners nor any of their Affiliates shall be liable, responsible or accountable in damages or otherwise to the Partnership or any Limited Partner for any loss or damage incurred by reason of any act or omission performed or omitted by such General Partner or such Affiliate in good faith and reasonably believed by it to be in or not opposed to the best interests of the Partnership and within the scope of the authority granted to it by this Agreement or by law or by the Consent of the Limited Partners in accordance with the provisions of this Agreement, provided that such General Partner or such Affiliate was not guilty of gross negligence, willful misfeasance, bad faith or reckless disregard of its duties with respect to such act or omission and, with respect to the Managing General Partner and any Affiliate of the Managing General Partner, was not guilty of any of the foregoing, negligence or misconduct with respect to such act or omission. To the fullest

extent permitted by law, the Partnership, out of its assets and subject to Section 5.10, and not out of the assets of the General Partners, shall indemnify and hold harmless any General Partner and any of its Affiliates who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Partnership), by reason of any act or omission or alleged act or omission arising out of such Person's activities as a General Partner or as an officer, partner, director, shareholder or Affiliate of a General Partner if such activities were performed in good faith and were reasonably believed by such Person to be in or not opposed to the best interests of the Partnership and to be within the scope of the authority conferred by this Agreement or by law or by the Consent of the Limited Partners in accordance with the provisions of this Agreement, against losses, damages, or expenses for which such Person has not otherwise been reimbursed (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such Person in connection with such action, suit or proceeding so long as such Person was not guilty of gross negligence, willful misfeasance, bad faith or reckless disregard of such Person's duties with respect to such acts or omissions and, with respect to the Managing General Partner or any Affiliate of the Managing General Partner, was not guilty of any of the foregoing, negligence or misconduct with respect to such acts or omissions, and, with respect to any criminal action or proceeding, and had no reasonable cause to believe his conduct was unlawful and provided (1) that the satisfaction of any indemnification and any holding harmless shall be from and limited to Partnership assets and no Limited Partner shall have any personal liability on account thereof, and (2) that such an indemnification of an Affiliate shall be limited to losses, damages or expenses (a) which such Affiliate incurred solely as a result of such Affiliate's status as an Affiliate of a General Partner or (b) to which the Affiliate is subject because it has performed an obligation of a General Partner on behalf of such General Partner. Notwithstanding the foregoing, absent a judicial or administrative determination that a General Partner or any of its Affiliates seeking indemnification was not liable on the merits or guilty of disabling conduct within the meaning of Section 17(h) of the 1940 Act, the decision by the Partnership to indemnify a General Partner or any such Affiliate must be

based upon the reasonable determination of independent counsel or Independent General Partners not parties to the claim for which indemnification is to be sought, after review of the facts, that such disabling conduct did not occur. The Partnership may not incur that portion of liability insurance which insures the General Partners or their Affiliates for any liability as to which the General Partners may not be indemnified pursuant to this Section 5.9.

B. Notwithstanding the provisions of Section 5.9A, neither the Managing General Partner, any controlling Person of the Managing General Partner nor any of its Affiliates acting as a broker-dealer in connection with the offering of Units shall be indemnified by the Partnership for any losses, liabilities or expenses arising from or out of an alleged violation of Federal or state securities laws unless (1) there has been a successful adjudication on the merits of each count involving alleged securities violations and a court shall have approved the proposed indemnification, (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction and a court shall have approved the proposed indemnification or (3) in the case of a legal proceeding which has been settled without a court ruling, a court, after having been informed in writing of the terms of the proposed indemnification and of the opinion of the Securities and Exchange Commission with respect to such indemnification, shall have approved the proposed indemnification.

Section 5.10. Indemnification of the Independent General Partners by Certain General Partners. To the extent that an Independent General Partner has a valid claim for indemnification from the Partnership pursuant to Section 5.9 and has pursued such claim against the Partnership, but such claim has not been satisfied, the Managing General Partner shall satisfy such claim; provided, however, that the maximum aggregate amount payable hereunder by the Managing General Partner shall be \$100 million which maximum aggregate amount shall be reduced by the amount of any indemnification paid by the Managing General Partner to the general partners of the Other Partnership who are not "interested persons" (as such term is defined in the 1940 Act) of the Other Partnership.

Section 5.11. Indemnification of the Investment Adviser. To the extent permissible under the 1940 Act and

State law, upon the approval of the Independent General Partners, the investment management agreement in effect with the Investment Adviser may provide for indemnification by the Partnership of the Investment Adviser, or any Affiliate thereof for any act or omission or alleged act or omission arising out of its activities as Investment Adviser to the Partnership.

Section 5.12. Authorization of Registration Statement. Each of the Partners and each other Person who may acquire an interest in the Partnership hereby approves, ratifies and confirms the execution, delivery and performance of the Agreement, the Investment Advisory Agreement, to be entered into between the Investment Adviser and the Partnership, the Agency Agreement, to be entered into among the Managing General Partner, Merrill Lynch, Pierce, Fenner & Smith Incorporated and the Partnership, the Administrative Services Agreement to be entered into among the Managing General Partner, the Fund Administrator and the Partnership, the Custodian Agreement to be entered into between The First Jersey National Bank and the Partnership and the other transactions described in or contemplated by the Registration Statement, and agrees that the General Partners are authorized to execute, deliver and perform the other agreements, acts, transactions, and matters contemplated hereby or described in or contemplated by the Registration Statement on behalf of the Partnership without any further act, approval or vote of the Partners of the Partnership, notwithstanding any other provision of this Agreement, the Act or any applicable law, rule or regulation.

## ARTICLE SIX

### TRANSFERABILITY OF GENERAL PARTNER'S INTEREST

Section 6.1. Withdrawal or Retirement by an Independent General Partner. Subject to Section 6.5, an Independent General Partner may voluntarily resign or withdraw from the Partnership, but only upon compliance with all of the following procedures:

A. The Independent General Partner shall give Notification of resignation or withdrawal to the General Partners at least 60 days prior to the date on which he proposes to withdraw.